being within the jurisdiction was subject to the inherent right of the sovereign to tax. The decision results in economic double taxation which can be remedied only by the legislature.[15] On the one hand, the right of Vermont to tax these shares is well established and rests on the right of the sovereign in creating a corporation to impose reasonable regulations, of which this statute is one.[16] On the other hand, Massachusetts cannot be deprived of its right to tax property within its jurisdiction by the legislation of any other state.[17] The value of the right of the owner against or in the corporation, as evidenced by the shares, is in no way diminished by the Vermont statute, and the quality of property in them is therefore still attached to the owner and taxable at his domicil. The undesirable result of the decision can be avoided only by the exemption of such property in one state when taxed in another.[18]

THE RIGHT OF ABUTTING OWNERS TO DAMAGES FOR THE VACATION OF STREETS.—Power to vacate a public highway belongs exclusively to the legislature, and neither the motives nor the discretion of the proper authorities is subject to review by the courts.[1] Jurisdiction may be claimed, however, if there is an issue as to whether the discontinuance was for public or private use, for the power can be exercised only in order to subserve public welfare.[2] There is a presumption that the closing of the street by the legislature or a municipal corporation was for public use.[3] This presumption may be refuted, however, and the

[15]This is sometimes called "duplicate" taxation. Taxation is double in the legal sense only when both taxes are imposed by the same jurisdictions. Judy *v.* Beckwith (1908) 137 Iowa. 24, 114 N. W. 565. The imposition of the transfer tax upon the same property by two states is not unconstitutional. Blackstone *v.* Miller (1903) 188 U. S. 189, 23 Sup. Ct. Rep. 277. In Kidd *v.* Alabama (1903) 188 U. S. 730, 732, 23 Sup. Ct. Rep. 401, the court said: "No doubt it would be a great advantage to the country and to the individual States if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided. But the constitution of the United States does not go so far".

[16]Wiley *v.* Commissioners (1892) 111 N. C. 397, 16 S. E. 542; Corry *v.* Baltimore (1905) 196 U. S. 466, 25 Sup. Ct. Rep. 297.

[17]Kidd *v.* Alabama, *supra*; Judy *v.* Beckwith *supra*; Central of Ga. Ry. *v.* Wright (C. C. 1908) 166 Fed. 153; State *v.* Nelson (1909) 107 Minn. 319, 119 N. W. 1058; Dyer *v.* Osborne (1876) 11 R. I. 321. The Massachusetts statute in the principal case was declared valid in Hawley *v.* Malden, *supra*. A state may tax stock certificates of a foreign corporation even though the state of incorporation exempts them from taxation. Appeal Tax Court *v.* Gill (1878) 50 Md. 378.

[18]This principle is illustrated in Lockwood *v.* Weston (1891) 61 Conn. 211, 23 Atl. 9; State *v.* Ross (1852) 23 N. J. L. 517; People *v.* Campbell (1893) 138 N. Y. 543, 546, 34 N. E. 370.

[1]The authority may be delegated to municipalities, in which case strict compliance with the statute is necessary. People *v.* Atchison, Topeka & Sante Fe Ry. (1905) 217 Ill. 594, 75 N. E. 573; Smith *v.* City of Centralia (1909) 55 Wash. 573, 104 Pac. 797. See also 3 Dillon, Municipal Corporations (5th ed.) § 1160.

[2]Van Wetsen *v.* Gutman (1894) 79 Md. 405, 29 Atl. 608.

[3]Henderson *v.* City of Lexington (1909) 132 Ky. 390, 111 S. W. 318.

vacation held invalid if it is shown that the closing was primarily for private gain.[4] Inasmuch as most vacations benefit private enterprises in greater or less degree, some courts insist that fraud or collusion must be proved before the vacation will be held void.[5]

But where, admittedly, the vacation is for public use, the further question as to whether the vacation amounts to a taking of property from the abutting owner is one that has vexed the courts. The first point upon which there is a conflict is whether the abutting owner's interest in the street is a property right.[6] Some jurisdictions answer this question in the negative and insist that the right to damages is purely statutory.[7] The weight of authority, however, holds that his rights, particularly that of access, are property which cannot be taken from him without just compensation.[8] The second point upon which there is further disagreement is as to what vacations amount to a taking of the abutting owner's property, admitting that he has property rights in the street. According to a test laid down in an early Massachusetts case, the injury must be different in kind rather than degree from that suffered by the public in order to amount to a taking.[9] Applying this rule courts have generally allowed damages to the owner in cases where his property immediately abuts on the part of the street vacated.[10] If the property abuts on the street but not on the

[4]City of Louisville *v.* Bannon (1899) 99 Ky. 74, 35 S. W. 120; Smith *v.* McDowell (1893) 148 Ill. 51, 35 N. E. 141; Horton *v.* Williams (1894) 99 Mich. 423, 58 N. W. 369. Where the vacation is for the purpose of building depots or eliminating dangerous railroad crossings it is generally good even though the railroad is thereby benefitted because of the quasi-public nature of the enterprise. Freeman *v.* City of Centralia (1912) 67 Wash. 142, 120 Pac. 886.

[5]Ponischil *v.* Hoquiam Sash & Door Co. (1906) 41 Wash. 303, 83 Pac. 316; Canady *v.* Coeur D'Alene Lumber Co. (1911) 21 Idaho 77, 120 Pac. 830. In the latter case it is said that it is immaterial that the street was vacated for private use.

[6]The conflicting decisions may be due in some measure to the complicated interests in the street of the public and the abutting owner. The general presumption is that the fee to half the street is in the abutting owner with an easement in the state. But in some cases the fee is in the municipality or the state in trust for the public. See 14 Columbia Law Rev., 86; 2 Columbia Law Rev., 492.

[7]Newark etc. R. R. *v.* Town of Montclair (1913) 84 N. J. L. 46, 85 Atl. 1028; State *v.* Commissioners of Deer Lodge County (1897) 19 Mont. 582, 49 Pac. 147; Nocton *v.* Pennsylvania R. R. Co. (1907) 32 Pa. Super. Ct. 555.

[8]See 3 McQuillin, Municipal Corporations, § 1405. The federal and most of the state constitutions provide that private property cannot be taken for public use without just compensation. U. S. Const., Amend. 5; see for example N. Y. Const., Art. 1, § 6.

[9]Smith *v.* City of Boston (1851) 61 Mass. 254. The test is expressly repudiated in federal decisions in cases of obstruction of thoroughfares. Carver *v.* San Pedro etc. R. R. (1906) 151 Fed. 334.

[10]3 Dillon, Municipal Corporations (5th ed.) 1160; State *v.* Commissioners of Deer Lodge County, *supra*; see Pearsall *v.* Supervisors of Eaton County (1889) 74 Mich. 558, 42 N. W. 77. If, however, only the corner of the property touches the part vacated it is said not to abut. Albes *v.* Southern Ry. (1909) 164 Ala. 356, 51 So. 327; but see City of Chicago *v.* Burcky (1895) 158 Ill. 103, 42 N. E. 178. In the latter case the lot was also placed in a blind alley by the closing of the street. If the property does not abut on the street at all there is no relief unless all access is

part vacated the decisions are not in harmony. Some jurisdictions hold that the owner has an easement throughout the street or at least to the nearest intersecting streets at both ends of the street on which his property abuts. Accordingly, his injury from a vacation within these limits is peculiar and he is entitled to compensation.[11] On the other hand, it is held that so long as there is access from one end of the street the owner is only inconvenienced in a greater degree than the community and, therefore, his injury is not "different in kind" so as to warrant damages.[12] But the fact that there is one way of access left open will not deprive the owner of damages if the vacation places his property in a *cul-de-sac*.[13]

The application of the "different in kind" test, as was done in the recent case of *Hill* v. *Kimball* (Ill. 1915) 110 N. E. 18, to the vacation of streets in a platted section has increased the confusion among the authorities. This case held that the lot owner could only recover damages for the vacation of such streets or alleys in the plat as were in the block in which his property was located. The rights of a lot owner in the streets of a platted section differ from those of an abutting owner in an ordinary street. The extreme view, advanced in a Pennsylvania decision, seems to regard the lot owner as having a property right in all the streets in the plat. This theory may have been found necessary because of the peculiar state of the law in that jurisdiction concerning property owner's rights in a street.[14] A better doctrine gives the lot owner a property right in those streets reasonably

---

cut off. Newark etc. R. R. *v.* Town of Montclair, *supra*; Canady *v.* Coeur D'Alene Lumber Co., *supra*. Where all access is cut off the New York statute is held broad enough to include the non-abutting property owner. Matter of the City of New York (N. Y. 1912) 149 App. Div. 55, 133 N. Y. Supp. 894; see also Smith *v.* City of Centralia, *supra*.

[11]City of Indianapolis *v.* Kingsbury (1884) 101 Ind. 200; Gargan *v.* Louisville etc. Ry. (1889) 89 Ky. 212, 12 S. W. 258. It makes no difference that the two ends of the street have different names. Alabama etc. Ry. *v.* Turner (Miss. 1910) 52 So. 261. The fact that there is access from another street should only be considered in estimating the amount of damages. Heinrich *v.* City of St. Louis (1894) 125 Mo. 424, 28 S. W. 626.

[12]Gerhard *v.* Bridge Commissioners (1886) 15 R. I. 334; Whitsett *v.* Union Depot & R. Co. (1887) 10 Colo. 243, 15 Pac. 339; Van Valkenburg *v.* Rutherford (1913) 92 Neb. 803, 139 N. W. 652; see Fearing *v.* Irwin (1874) 55 N. Y. 486.

[13]Jones *v.* City of Aurora (1915) 97 Neb. 825, 151 N. W. 958; Vanderburgh *v.* City of Minneapolis (1906) 98 Minn. 329, 108 N. W. 480; Ruscomb Street (1907) 33 Pa. Super. Ct. 148.

[14]Pennsylvania is one of the jurisdictions which refuses to recognize that the abutting owner has property rights in an ordinary street. Nocton *v.* Pennsylvania R. R. Co., *supra*; see Paul *v.* Carver (1885) 24 Pa. 207. But in a platted section it is said that the lot owner has property rights because of an implied covenant with the grantor that all the streets will be kept open for the lot owners and the public. The municipality, according to this jurisdiction, has a perfect right to vacate the streets whereupon the streets revert to the original grantor who is bound to maintain them as private ways open to the public. This implied covenant with the grantor gives the lot owner such a property interest in these private ways that he has a right to damages when they are taken by eminent domain. See Chambersburg Shoe Mfg. Co. *v.* Cumberland Valley R. R. (1913) 240 Pa. 519, 87 Atl. 968.

necessary for the enjoyment of his land.[15] If this rule had been applied to the facts in the principal case the result found there would have been the same. The decision would then have rested on a simpler basis and the prevailing test would not have been made more bewildering by exceptions and qualifications.

Much of the difficulty experienced in applying the prevailing test is due to the interpretations placed on such words and phrases as "special", "peculiar" and "different in kind".[16] A more satisfactory result might be reached if besides allowing damages to owners whose property abuts on the part vacated, damages were also given to owners of property abutting on the street, provided an actual loss could be shown.[17] This loss could be determined and estimated by the difference in the market value before and after the closing of the street.[18] The fact that the property abuts on a highway gives it value and it seems unjust to deny compensation simply because the public is also somewhat inconvenienced by the vacation.

ADMISSIBILITY ON A TRIAL FOR MURDER OF CONFESSIONS OF AN ACCUSED AT A CORONER'S INQUEST.—A confession is an admission of guilt of the crime charged and is not a mere admission of an evidentiary fact tending to incriminate the defendant.[1] Much less can it be held to include exculpatory declarations.[2] Yet the courts in dealing with the rule of exclusion properly limited to confessions have, in the class of cases now under discussion, lost sight of all restrictions upon it, and have applied it indiscriminately to any statement made by the accused before the coroner.[3] Recognizing the proper sphere for the operation of this rule, it is still necessary to determine the exact requirements of the rule itself. All the courts agree that a confession to be admis-

---

[15]Highbarger *v.* Milford (1905) 71 Kan. 331, 80 Pac. 633.

[16]See note in 28 Am. Law Reg. 624.

[17]This same conflict is to be found in cases where streets are obstructed and this rule is suggested as a test for such cases. See articles by Jeremiah Smith, 15 Columbia Law Rev., 1, 142.

[18]Henderson *v.* City of Lexington, *supra*. But speculative damages should not be considered. Meighan *v.* Birmingham Terminal Co. (1910) 165 Ala. 591, 51 So. 775; German Lutheran Congregation *v.* Mayor etc. of Baltimore (1914) 123 Md. 142, 90 Atl. 982. If the fee of the street reverts to the abutting owner the value of this might be deducted from the loss. Heinrich *v.* City of St. Louis, *supra*.

[1]Covington *v.* State (1877) 79 Ga. 687, 690, 7 S. E. 153; Michaels *v.* People (1904) 208 Ill. 603, 70 N. E. 747; State *v.* Moore (1909) 36 Utah 521, 105 Pac. 293; *contra*, McGehee *v.* State (1911) 171 Ala. 19, 55 So. 159; *cf.* State *v.* Porter (1897) 32 Ore. 135, 49 Pac. 964.

[2]State *v.* Novak (1899) 109 Iowa 717, 79 N. W. 465; Mora *v.* People (1893) 19 Colo. 255, 35 Pac. 179; People *v.* Weber (1906) 149 Cal. 325, 86 Pac. 671; but see Bram *v.* United States (1897) 168 U. S. 532, 18 Sup. Ct. Rep. 183; Tuttle *v.* People (1905) 33 Colo. 243, 79 Pac. 1035; State *v.* Gianfala (1904) 113 La. 463, 37 So. 30.

[3]This will be seen from an examination of the cases hereinafter cited. Since, however, the reasoning of the courts in cases involving statements other than confessions is the same as in those involving confession alone, no distinction has been made between them in citation for the purpose of this discussion.